

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 349 of 1999
with
CIVIL APPLICATION No 7060 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

TARABEN NAGINDAS WD/O

DECD. NAGINDAS P MODI

Versus

INDRASING NARAYANSING

Appearance:

MR PJ KANABAR for Appellants

MR IM PANDYA for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/07/1999

ORAL JUDGEMENT

ADMITTED. Learned advocate Mr.I.M.Pandya appears and waives service of notice of admission on behalf of respondents. With the consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. In this Appeal from Order, the appellants herein

have brought in challenge the common order dated 2.7.1999 recorded below Exh.6 and Ex.21 in Civil Suit No.355 of 1999 by the learned Chamber Judge, Civil Civil Court, Ahmedabad whereby he has rejected the notice of motion at Ex.6 taken out by the appellants and allowed the notice of motion at Ex.21 taken out by the respondents. Thereby the learned trial Judge has ordered the plaintiffs not to create any hinderance on the road on eastern-side to the defendants for passing and re-passing to go on the disputed land. The appellants were also ordered not to transfer the suit land till disposal of the suit.

3. The appellants are the original plaintiffs, whereas the respondents are the original defendants. For the sake of brevity and convenience, the parties are hereinafter referred as 'plaintiffs' and 'defendants'.

4. The brief facts of the plaintiffs' case in the lower court as per Ex.1 & Ex.5 are that the plaintiffs are the owners of the suit land bearing Survey Nos. 46/2 and 46/3. It was their further case that, originally, the disputed land stood in the name of deceased Nagindas Purshottamdas, who happened to be the husband of plaintiff No.1 and the father of plaintiffs Nos.2 to 5. It was further their case that the defendants tried to obstruct their lawful and peaceful possession on the suit land and, therefore, they filed a suit for injunction restraining the defendants from disturbing their peaceful possession. Along with the suit, a notice of motion at Ex.6 was also preferred praying for restraining the defendants from interfering with their possession during pendency of the suit.

5. The defendants appeared and contested the suit by filing written statement as well as by filing a notice of motion at Ex.21 wherein they claimed relief of injunction to restrain the plaintiffs from making any construction over the 18 ft. road and creating any interference or hinderance on the said road for passing and repassing and transferring the suit land.

6. The learned trial Judge after hearing the learned advocates appearing for the parties, recorded the following undisputed facts:

(i) The land bearing Survey Nos.46/2, 46/3, City Survey No.1101 and 1100 admeasuring 2330 and 550 sq. yds. are situated at Saijpur-Bogha, Ahmedabad;

(ii) It is agricultural land. It was belonged to

Nagindas Purshottamdas;

(iii) Present plaintiffs are the legal heirs of Nagindas Purshottamdas;

(iv) In Revenue record, the suit land is entered in the name of present plaintiffs by entry No.7432;

(v) As per sketch produced by the plaintiffs, Marks 3/1 and 3/2, land bearing Survey Nos.46/3 and 46/2 are surrounded by other persons on North, South and West-side;

(vi) It also appears from the Map that there is road on the Eastern side, which is 15' in width;

(vii) The defendant has produced Agreement to Sell and General Power of Attorney at Marks 18/2 to 18/10. It bears signature of Nagindas Purshottamdas in all documents. It is executed in presence of Notary.

(viii) The same paper Mark 18/1 is produced in the name of Taraben Nagindas i.e. present plaintiff.

(ix) Agreement to Sell Marks 18/2 to 18/10 bears signature of Modi Hemand N. It is contended by the plaintiffs that they were not knowing about the Agreement to Sell as well as General Power of Attorney by Nagindas Purshottamdas. Signature of the plaintiff No.2 is bogus signature.

7. On the aforesaid premise of undisputed facts, the learned trial judge held that the suit land originally belonged to Nagindas Purshottamdas who expired and therefore the plaintiffs being legal heirs of the deceased became owners of the suit land. However, the learned trial Judge has further observed that, by virtue of an Agreement to Sell and General Power of Attorney, possession of the land was handed over to the defendants by late Nagindas Purshottamdas. The learned trial Judge has further found that, since Village Form No.7 & 12 for the subsequent years were not produced, the plaintiffs have not satisfactorily established their possession over the suit land.

8. On the aforesaid grounds, the learned trial Judge has not believed the case of the plaintiffs and believed the case of the defendants and resultantly he has rejected the notice of motion at Ex.6 submitted by the plaintiffs while he has allowed the notice of motion at

Ex.21 submitted by the defendants.

9. It is this order which is impugned before this court. Learned advocates Mr.P.J.Kanabar for the appellants and Mr.I.M.Pandya for the respondents have made their elaborate submissions.

10. After having heard the learned advocates and on perusal of the judgment impugned and xerox copies of the documents which were relied upon by the defendants in the lower court and copies whereof are submitted before me during the course of submissions, and after having given anxious consideration to the rival contentions of both the learned advocates, I am of the opinion that the impugned judgment requires consideration for the reasons which I would immediately state hereinafter:

(i) The plaintiffs are the heirs and legal representatives of late Nagindas Purshottamdas. As per the say of the defendants, the Agreement to Sell dated 24.12.1985 was made by deceased Nagindas Purshottamdas in favour of the defendants for selling the disputed land;

(ii) Admittedly, there were no further transactions from 1985 to 1992;

(iii) On 4.2.1992, as per the say of the learned advocate, an unregistered sale deed was executed by late Nagindas Purshottamdas and simultaneously on even date one irrevocable power of attorney was also made by Nagindas Purshottamdas in favour of the defendants. Unregistered sale deed does not confer any right since registration of sale deed is compulsory under the law;

(iv) Since 1992 to 1999, both the parties were silent. Neither of the parties has moved the court for establishing their right, title and interests in the suit property. Nagindas Purshottamdas died in 1993. Since then upto 1999, the defendants have never approached the plaintiffs claiming their right, title and interests in the suit property by virtue of the unregistered sale deed and the irrevocable power of attorney. Admittedly, names of the plaintiffs have been entered in the property card i.e. Village Form No.7 & 12;

(v) If the defendants could have become owners by virtue of the unregistered sale deed and irrevocable power of attorney, their names could

have been entered into the property card. Since unregistered sale deed never conferred title, names of the defendants cannot be entered into Pannipatrak;

(vi) There is no evidence that who is paying land revenue;

(vii) Defendant's possession over the suit property cannot be believed at this stage as he having no valid title. Mere agreement to sell and unregistered sale deed, which cannot be recognised valid sale deed, are not conclusive proof to establish possession over the suit land qua the heirs and legal representatives of deceased owner having valid title.

11. On the aforesaid premise, I am of the opinion that the documents relied upon by the defendants require consideration and that can be done only during trial.

12. In view of the aforesaid state of affairs, I am of the opinion that the learned trial Judge has committed serious error in law and in facts as well in considering both the applications. Therefore, the order recorded by the learned trial Judge is required to be set aside and quashed by allowing the application at Ex.6 and by partly allowing the application at Ex.21. Resultantly, both the parties are directed to maintain status quo with respect to the suit property. The defendants should not obstruct the plaintiffs in their possession; the same way, the plaintiffs also should not put up any construction over the suit land nor shall they transfer the property to any one else by way of sale, mortgage or lease till disposal of the suit. So far as the prayer sought in the application at Ex.21 with respect to the right of way, I do not deem it expedient to consider the same at this stage.

13. In the net result, Appeal from Order succeeds in part. It is, accordingly, allowed partly to the aforesaid extent with no order as to costs.

14. It is made clear that the observations made hereinabove shall not be construed as an expression of final opinion with respect to the contentions that may be advanced by both the parties, and the learned trial Judge before whom the suit is pending for trial shall decide it uninfluenced by whatever observations are made hereinabove on its merits and in accordance with law. It would be open for the parties to file appropriate

application praying expeditious hearing of the suit
before the lower court.

15. In view of the aforesaid, there shall be no order
on Civil Application No.7060 of 1999.

[KMG Thilake]

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